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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SONNY RAY HARDAWAY,

Plaintiff - Appellant,

v.

RICHARD PHILLIPS,

Defendant - Appellee.

No. 04-16483

D.C. No. CV-01-01949-DFL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

California state prisoner Sonny Ray Hardaway appeals pro se from the district court's order dismissing his action for failure to exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291. We review the district court's determination that a prisoner failed to exhaust available administrative remedies de novo and review its findings of fact for clear error. *Ngo v. Woodford*, 403 F.3d 620, 622 (9th Cir. 2005). We affirm.

Hardaway's contention that he did not need to exhaust administrative remedies because he is only seeking money damages is without merit. *See Booth v. Churner*, 532 U.S. 731, 734 (2001).

Hardaway also appears to contend that he did exhaust administrative remedies because he filed a grievance that was not responded to. We conclude, however, that the district court did not clearly err in finding that Hardaway did not file a grievance regarding the incident underlying this action.

AFFIRMED.